

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: MID IOWA PLAZA LLC ; Polk County, Iowa.	ADMINISTRATIVE CONSENT ORDER NO. 2012-SW- 10
--	---

**TO: Ed Skinner
Registered Agent
Mid Iowa Plaza LLC
204 8th Street SE
Altoona IA 50009**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between the Iowa Department of Natural Resources (Department) and Mid Iowa Plaza LLC (Mid Iowa Plaza) in order to resolve issues arising from the disposal of solid waste at Parcel S of the Plat of Survey of 6003 NE 72nd Street, Bondurant, Iowa. This Order sets forth continuing care obligations for the site and establishes a penalty of \$10,000.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Chad Stobbe
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
515-242-5851

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

III. STATEMENT OF FACTS

1. Mid Iowa Plaza is the owner of a property located at 6003 NE 72nd Street, Bondurant, Iowa. The property is being subdivided in 2012 to ensure that the site of material deposition is separated from future development sites.

2. In 2006, the Department became aware that Environmental Reclamation & Recycling LLC (ERR) was improperly stockpiling construction and demolition (C&D) waste materials at the property of Mid Iowa Plaza at 6003 NE 72nd Street, Bondurant, Iowa.

a. The Manager of Mid Iowa Plaza, LLC was at that time also an owner of ERR and the membership of Mid Iowa Plaza, LLC was unaware of the storage taking place.

3. The Department directed ERR to remove all material from the site by November 1, 2006.

4. After subsequent discussions between the Department and ERR, BUD #77-SDP-59-06X was issued to ERR for the period of November 7, 2006 to November 1, 2007 and was not subject to renewal. The BUD included the following requirements:

- The existing stockpile of processed C & D material being stored at the project location be screened to an acceptable size of 1 ½ inch or less and used as beneficial fill or removed from the site by January 1, 2007.
- The majority of the fill material shall consist of soil, sand, rubble and may contain minimal amounts (less than 1 ½ inch in size) of other organic and inorganic materials normally received at the ERR C & D processing facility.
- Access onto the property shall be controlled (fencing, signage, etc.) to discourage illegal dumping of solid waste at the site by unauthorized persons.
- The screened C & D material must be mixed with clean soil in a 2:1 ratio (screened material:clean soil) before final disposition or placed in alternating layers of not more than twelve inches deep of screened material then applicable ratio of clean dirt. A daily log should be kept of the amounts of fill material and soil used at the site.
- Adequate clean soil must be available at all times and a stockpile must be established on-site for use during inclement weather and when the ground freezes.
- Record keeping and reporting shall be followed in accordance with Iowa Administrative Code (IAC) 567 Chapter 108.7. This includes submittal of an annual Solid By-Product Management Plan pursuant to subrule 108.6(2). Analytical results, including the synthetic precipitation leaching procedure (SPLP) and RCRA Total Metals, including Thallium, of the material that is beneficially used as fill shall be submitted with the annual Solid By-Product Management Plan within 60 days of the end of each calendar year. The annual reporting

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

requirements shall be submitted to the Department's Main Office in Des Moines, IA and Field Office #5 in Des Moines, IA.

On November 7, 2006, the Department also issued a letter to ERR in regard to the storage of processed C & D materials at the subject site. This letter provided a deadline of January 1, 2007 to use the stockpile materials pursuant to the BUD, return the material to the ERR processing facility, or properly dispose of the material. This letter further stated that the Department did not anticipate extending the BUD beyond a one year time period due to multiple concerns regarding beneficial use fill projects.

5. ERR did not remove the stockpiled processed C & D materials or use those materials pursuant to the BUD by January 1, 2007. This stockpile constituted the illegal storage or disposal of solid waste at a location other than a permitted sanitary disposal project. On January 23, 2007, the Department sent a letter to ERR notifying ERR of the noncompliance.

6. Mid-Iowa Plaza was aware of the noncompliance of ERR, however neither Mid Iowa Plaza, LLC's members nor the entity was made a part of nor was the entity of Mid Iowa Plaza, LLC involved in any of the permitting or non-permitting of ERR or a party to any of the orders of ERR or the DNR at that time.

7. On February 23, 2007, the Department inspected the subject site. Significant piles of noncompliant materials were observed. These piles included unscreened and partially screened ground wood containing plastic and other debris. West of these stockpiles, a stockpile measuring approximately 50 yards wide by 15 feet tall was observed to extend over the entire north to south length of the site. This stockpile contained screened or partially screened material. None of the material had been mixed with soil. Photographs were taken.

8. On February 27, 2007, ERR contacted the Department and indicated that all stockpiled material would be removed within the following few weeks.

9. On March 2, 2007, the Department issued a letter to ERR. The letter noted that the material being used as beneficial fill at the Bondurant site did not conform to the requirements of the BUD.

10. On April 20, 2007 ERR submitted a permit compliance response to the Department. With regard to the Bondurant site, ERR requested 60 days to develop a plan to address the ongoing noncompliance and promised to have all stockpiles removed by May 11, 2007.

11. On April 24, 2007, the Department issued Notice of Intent to Rescind BUD #77-SDP-59-06X. The rescission was based upon the failure to correct continuing noncompliance with the BUD including:

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

- Fill material not meeting approval specifications.
- Failure to comply with the January 1, 2007 project timeframe.
- Fill material not being mixed or layered with clean soil prior to disposition.
- No clean soil stockpiled onsite to facilitate mixing or layering.
- Site access not being restricted.
- Excessive litter migrating off-site.
- Delinquent Annual Solid Waste By-Product Management Plan.
- The lack of suitability of the material being deposited in relation to the end use proposed to justify the BUD.

On this date, the Department also issued a letter approving the ERR proposed May 11, 2007 deadline for removing stockpiles, completing fencing, and addressing litter issues.

13. On May 24, 2007, ERR filed a timely Notice of Appeal of the rescission of the BUD.

14. The BUD expired on November 1, 2007 and was not renewed.

15. On August 26, 2008, the Department and ERR entered into Consent Order No. 2008-SW-06-A1. Pursuant to this Consent Order, ERR agreed to remove all of the waste materials from the property at 6003 NE 72nd Street by December 31, 2009 and provided for stipulated penalties for failure to do so. ERR failed to comply with this Consent Order.

16. On October 7, 2008, Glenn Cheery of the U.S. EPA conducted a site inspection at the subject property and determined that there were no violations of federal statute or rules. A Memorandum was issued by EPA on October 27, 2008 affirming these findings.

17. On March 24, 2009, the City of Bondurant filed a Civil Citation Lawsuit in the Iowa District Court for Polk County, being case number CV7624, naming as Defendant Mid Iowa Plaza, LLC and alleging that a nuisance existed on the property due to the continued illegal disposal of solid waste at the property.

18. On September 1, 2009, the City of Bondurant submitted a request to the Department requesting, on behalf of Mid Iowa Plaza, approval to bury between 64,000 and 90,000 tons of solid waste on the property at 6003 NE 72nd Street, Bondurant, Iowa. The request provided specific specifications for such disposal.

19. On September 18, 2009, Mid Iowa Plaza and the City of Bondurant submitted a Parties' Joint Stipulation of Undisputed Facts to the Polk County District Court and requested the Court's approval for the parties' solid waste disposal plan.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

20. On September 19, 2009 the Polk County District Court issued an Order, Judgment and Decree in Case No. CV7624 approving the parties' proposal to bury the solid waste on the property.

21. On September 23, 2009, the Department notified counsel for the City of Bondurant that any waste disposal at the site must be in compliance with 567 IAC Chapter 114, which applies to C&D landfills.

22. On October 16, 2009, the Department inspected the disposal site and observed the illegal burial of solid waste material at that location. Samples were taken from the storm water discharge to the creek and elevated pollution levels were documented.

23. As of January 1, 2010, Mid Iowa Plaza has completed the burial of solid waste at the property at 6003 NE 72nd Street, Bondurant. Said burial was not in compliance with 567 IAC Chapter 114.

24. On October 18, 2010, the Department inspected the disposal site. Water samples were taken of the discharge water from the burial site to the creek and elevated pollution levels were documented.

25. In November of 2010, Mid Iowa Plaza submitted to the Department a Hydrologic Monitoring Plan dated November 10, 2010, which outlined the proposed water quality monitoring procedures for the disposal site. The Department issued a comment letter on December 1, 2010.

26. On December 22, 2010, Mid Iowa Plaza submitted to the Department a Environmental Site Assessment Report describing the work performed at the disposal site, the surface water controls constructed, and the monitoring well system to be installed.

27. On March 8, 2011, Mid Iowa Plaza submitted an updated Hydrologic Monitoring Plan including information related to the initial sampling event.

28. On April 20, 2011, the Department issued a comment letter in regard to the Hydrologic Monitoring Plan.

29. On February 5, 2012, Mid Iowa Plaza submitted a Hydrologic Monitoring Report based upon groundwater and surface water sampling conducted on October 16, 2011. This was the third monitoring event conducted by Mid Iowa Plaza at the site.

30. As of the date of this Order, the No Further Contact Order issued by the State of Iowa by James R. Hummeston, Supervisor, Underground Storage Tanks Section, Iowa Department of Natural Resources, dated October 8, 2003, being registration number 198607614 LUST number 9LTD67 remains in full force and effect as it relates to the

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

following described real estate to wit: Parcel R of that Plat of Survey of a Parcel of Land of the NW ¼ of Section 7, Township 79 N, Range 22 West of 5th PM City of Bondurant, Polk County, Iowa, that is recorded in Book 14280 on Page 75-76 recorded on May 22, 2012 in the office of the Polk County Recorder.

31. That the Department and Mid Iowa Plaza, LLC agree that a restrictive covenant shall be placed upon Parcel S of that Plat of Survey of the NW ¼ Section 7 Township 79 North Range 22 West of the 5th P.M. located in the City of Bondurant, Polk County, Iowa, recorded May 22, 2012 in Book 14280 on Page 75-76; that said parcel S shall not be used for any other purpose other than vegetation, that Parcel S is approximately 2.843 acres more or less, and that all remaining real estate owned by Mid Iowa Plaza, LLC is not to be hindered by this restrictive covenant and this Order applies only to Parcel S of said Plat Survey.

IV. CONCLUSIONS OF LAW

The Department and Mid Iowa Plaza agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-123.
2. Iowa Code section 455B.301(20) provides, in part, that "solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.
3. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting the dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

V. ORDER

The Department orders and Mid Iowa Plaza hereby agrees to the following:

1. Upon the execution of this Order, Mid Iowa Plaza, LLC shall execute the restrictive covenant which is attached hereto as Exhibit B, and made a part hereof as though fully set out herein, and shall file such covenant of record with the Polk County Recorder's Office restricting the use of Parcel S. Upon recording, a copy of the recorded

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

document shall be sent to the Department by Mid Iowa Plaza, LLC within 60 days of recording.

2. Mid Iowa Plaza shall conduct groundwater and surface water monitoring at the monitoring points specified in the Hydrologic Monitoring Report dated December 31, 2011, for a minimum period of five years beginning in 2011 and continuing through 2015. Groundwater and surface water monitoring shall occur semiannually in 2012 and then annually for the period of 2013 through 2015. All monitoring and reporting shall be conducted in accordance with the following:

Sampling and testing occurring in 2012 through 2014 shall be for the following parameters:

- Boron
- Sodium
- Strontium
- Total Dissolved Solids
- Sulfate
- pH
- Ammonia-nitrogen

The sampling and testing occurring in 2015 shall be for the following parameters:

- Ammonia-nitrogen
- Antimony (total)
- Arsenic (total)
- Barium (total)
- Beryllium (total)
- Boron (total)
- Chromium (total)
- Iron (total)
- Lead (total)
- Manganese (total)
- Nickel (total)
- Sodium (total)
- Strontium (total)
- Thallium (total)
- Vanadium (total)
- Benzene
- Nitrogen Ammonia
- Methylene chloride

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

- Vinyl chloride
- Pentachlorophenol
- Napthalene
- 3-, 4-Methylphenol
- Bis(2-Ethylhexyl) phthalate
- Chloride
- Flouride
- Sulfate
- Total Dissolved Solids
- pH

Monitoring for a particular parameter may be ceased, upon the approval of the Department, after two consecutive non-detects or six consecutive test results that show the parameter is both below the applicable maximum contaminant level (MCL) or the mean plus two standard deviations where an MCL does not exist, and either declining or remaining constant.

3. By December 31st of each year, Mid Iowa Plaza shall submit to the Department an annual report, prepared by a qualified groundwater scientist, summarizing the analysis of groundwater and surface water monitoring in compliance with rule 567 IAC 114.26(6), using the sampling parameters above in lieu of 114.26(4)"d" and "e." By December 31st of each year Mid Iowa Plaza shall also submit an annual report prepared by an Iowa-licensed professional engineer that provides information concerning the general conditions at the site and documenting site inspection and maintenance. Any noted deficiencies shall be corrected within 90 days and documented in a follow-up report. The reports may be combined or filed separately.

4. By December 31st of each year, Mid Iowa Plaza shall submit to the Department an annual report, prepared by a qualified groundwater scientist, summarizing the analysis of groundwater and surface water monitoring in compliance with rule 567 IAC 114.26(6). By December 31st of each year Mid Iowa Plaza shall also submit an annual report prepared by an Iowa-licensed professional engineer that provides information concerning the general conditions at the site and documenting site inspection and maintenance. Any noted deficiencies shall be corrected within 90 days and documented in a follow-up report. The reports may be combined or filed separately.

5. At least 90 days prior to the conclusion of the initial five-year monitoring period, Mid Iowa Plaza shall submit a report to the Department containing a summary of all groundwater and surface water monitoring data thus far obtained, including an analysis of any groundwater contaminant trends detected to that point in time. The report shall be prepared by a qualified groundwater scientist.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

6. Monitoring and maintenance requirements may be extended for additional five year periods based upon consideration of groundwater monitoring data trends, general site conditions, and such other information as may be determined by the Department to be relevant. In the event of any extensions to the monitoring period beyond the initial five-year period, Mid Iowa Plaza shall provide an updated postclosure cost estimate and proof of financial assurance within 90 days of Department notification of the extended monitoring period.

7. The requirements of this Order shall be deemed satisfied when, at or after the conclusion of the initial five-year period, results for all groundwater parameters show that there are no MCL violations for any parameter and the test results are declining or stabilized at a level below the applicable MCL.

8. Within 30 days of the execution of this Order, Mid Iowa Plaza shall pay an administrative penalty in the amount of \$10,000.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Mid Iowa Plaza has avoided further economic harm by the burial of the solid waste onsite. Costs avoided include the costs of removal and proper disposal of the C&D waste that has been buried at the subject property. Pursuant to the site assessment plan submitted to the Department by Mid Iowa Plaza, avoided costs were in excess of \$1,300,000. The parties agree that this avoided cost can not be fully deemed an economic benefit to Mid Iowa Plaza because ERR is the primary beneficiary of this economic benefit. However, some portion can be attributed to Mid Iowa Plaza based upon the fact that Mid Iowa Plaza allowed the delivery of the solid waste to the property. Therefore, a penalty of \$6,000 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The illegal open dumping of solid waste threatens the groundwater of the state. This gravity assessment is mitigated by the fact that, prior to burial, Mid Iowa Plaza proposed to undertake groundwater monitoring and considered groundwater impacts in

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mid Iowa Plaza LLC**

the burial plan. Mid Iowa Plaza will further mitigate this risk through compliance with this Order. Therefore a penalty of \$1,000 is assessed for this factor.

c. Culpability. Mid Iowa Plaza was aware of the illegal delivery of solid waste to the subject property by ERR. Mid Iowa Plaza proceeded with the burial of waste materials despite notice from the Department that such burial must be in compliance with IAC Chapter 567-114. Therefore, a penalty of \$3,000 is assessed for this factor

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.308 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mid Iowa Plaza. By signature to this Order, all rights to appeal this Order are waived.

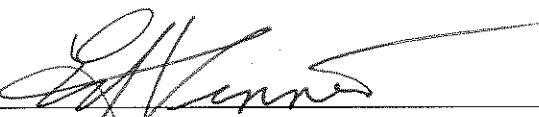
VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.307. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5th day of
July, 2012



ED SKINNER
MID IOWA PLAZA LLC

Dated this 5th day of
July, 2012

Field Office #5; Jon Tack; V.L.C.